

“Ask The Law”™ offers Q & A’s

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Logbook, Fireworks, Adjusting Brakes & CSA 2010 questions answered by law enforcement officials as of July 2010

**Warning: Laws are subject to change without notice.
These interpretations were made on June 10, 2010.**

LOGBOOK PAGE SEIZED BY OFFICER

Q: I had forgotten to bring my logbook current and got pulled over for speeding. When cited, the officer tore out that day’s original page from my logbook and kept it. Is it legal to confiscate a legal document without a warrant? Brian in Arizona

A: Provided by Sgt. Pete Camm (Ret.), California Highway Patrol, Sacramento, California:



The answer to your question is: yes. Under the Best Evidence Rule, officers are allowed to confiscate the original page or pages of your logbook when issuing a citation, no warrant required. A RODS (e.g., log book) is specifically required to be possessed, kept up to current status and required to be presented to enforcement, by a driver. See FMCSA interpretation 395.8 below:

Question 9: May a duplicate copy of a record of duty status be submitted if an original was seized by an enforcement official?

Guidance: A driver must prepare a second original record of duty status to replace any page taken by an enforcement official. The driver should note that the first original had been taken by an enforcement official and the circumstances under which it was taken.

FIREWORKS IN THE CAB OF A CMV

Q: What is the law regarding transporting fireworks in the cab/sleeper or under the bunk of a CMV. I have heard that you can have a limited amount in the cab or sleeper area and then I have heard that you cannot have any. Thanks, Robert in Washington

A: Provided by Sgt. James Portilla, California Highway Patrol, Commercial Vehicle Section, Sacramento, California:



Generally, consumer fireworks for personal use are allowed in a cab as long as the fireworks are legal in the states through which they are transported. However, depending on the amount and classification of the fireworks, hazardous material regulations may apply. In order to see how much and what type of fireworks you can transport you must look to Title 49 Code of

Federal Regulations Part 172 and 177. Some classifications and amounts require additional regulatory requirements (e.g. placards, hazmat license, special packaging, storage, and shipping papers). **In California, no fireworks are allowed in the cab of a bus or farm labor vehicle.**

ADJUSTING BRAKES ON A CMV

Q: In orientation, I was told and shown how to adjust slack adjusters. Can I do this or do I have to be actually certified? Mike in Arizona

A: Provided by **Senior Trooper Monty Dial (Ret.)**, Texas Highway Patrol, Commercial Vehicle Enforcement Division, Garland, Texas:

For an employee of the motor carrier to be able to inspect and/or adjust brakes, the motor carrier must certify the employee. The qualification for the brake inspector/adjustor can be found in Part 396.25.



A driver is not required to carry the certificate on their person, but the motor carrier must have the certificate available for inspection during a Compliance Review.

DRIVING WITH A BLOWN OUT TIRE

Q: One of our trailers recently blew a right outside tire. The driver called dispatch and, since he was only a few miles from where our repair work is contracted, was told to go into the shop. The driver got off the interstate so he could operate at a slower speed. Less than a mile from the repair shop, the driver was stopped. He immediately told the officer he knew the tire was flat and he pointed to the repair shop within sight. The officer put him out of service. Can I challenge this OOS - which earns us (the carrier) and the driver a hefty 10 points on our CSA 2010 score? Kathy in Iowa

A: Provided by **Jim Brokaw**, formerly a Staff Sergeant with Nebraska State Patrol, Carrier Enforcement Division, Lincoln, Nebraska:

You can file a Data Q with the FMCSA on their Website to challenge this Out of Service, but quite honestly, I doubt if you'll be successful.

Operating a CMV on a blown out tire (regardless of how far) is a violation of 49 CFR 393.75(a)(3). Although I know this is hindsight now, your dispatcher should have had someone from the shop go out to the truck.



The blown tire should have been replaced with a spare as soon as the driver discovered it. In the case of dual wheels, it's also permissible to simply single out the duals by taking the blown tire off and running on the inside wheel and tire; **provided you don't exceed the weight rating of the single tire.**

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